gation in the Land Office and then tried to set up the statute of limitations, but the court said this would be inequitable. *Van Wyck* v. *Knevals*, 106 U.S. 360, and *St Paul,etc.Ry.*v.*Phelps*,137 U.S.528 both hold that there is a grant in praesenti when the map of definite location is filed, which was June, 1867 in this case, and that a deed or patent is not necessary to give legal title. This being the case there is no reason why the Dakota road should not have defended its title against Rudnick.

BANKRUPTCY—HOMESTEAD—JURISDICTION OF BANKRUPTCY COURT.—Certain real property of a bankrupt was set aside as a homestead and as exempt under the laws of th state. A creditor holds a note of the bankrupt, on which the balance remaining unpaid has been allowed as a debt in the court of bankruptcy proceedings. According to the state laws as to debts contracted prior to the acquisition of the property constituting the homestead, the homestead in question is liable for the payment of the note. On petition of the creditor to the bankrupt court to take possession and sell the same and apply the proceeds to the extinguishment of the balance due on the note. *Held*, the bankrupt court is without power to so act. *In re Ingram* (1903) — C. C. A. 8th Circ —, 125 Fed. 913.

The right of the petitioner to have the homestead subjected to the payment of his claim, existing in his favor only, did not cause the title to vest in the trustee in bankruptcy, and so the bankrupt court was without power to order the sale. A creditor, like the petitioner, must seek his relief under the local laws in the state courts; and if a discharge of the bankrupt from all his debts, when granted by the bankrupt court will stand in the way of his obtaining relief, that court, after administering upon all the assets subject to its control, may withhold the bankrupt's discharge for a reasonable time to enable the creditor to assert his rights in the proper forum. For precedent, see *Lockwood* v. *Exchange Bank*, 190 U. S. 294, 23 Sup. Ct. 751, 47 L. Ed.—See also *In re Bass*, 3 Woods 382, Fed. Cas. No. 1,091; *In re Camp*, 91 Fed. 745. But see *In re Woodruff*, 96 Fed. 317.

CHATTEL MORTGAGES — UNIDENTIFIED NUMBER AMONG A GREATER NUMBER OF LIKE ARTICLES—VALIDITY.—A mortgage of 36 head of yearling cattle, located on a definitely described farm, was made and recorded. When the mortgage was given there were, on said farm, 44 head of cattle of the same description as that contained in the mortgage. Subsequently, the mortgagor sold 18 of the cattle to a third person, before the mortgaged 36 head had been separated or identified. The purchaser of the 18 head was made a party to an action between the mortgagee and mortgagor, in which the mortgagee sought to enforce its lien upon the cattle described in the mortgage, and it was *Held*, that the mortgage was valid, as against such purchaser, to the number of animals specified in the mortgage—that the purchaser had a right to buy, free from the mortgage, any eight of the cattle, but no more. *Sparks* v. *Deposit Bank of Paris et. al.* (1904), — Ky. —, 78 S. W. 171,

This holding is opposed to the general rule that a mortgage of a specified number of articles out of a larger number is void for uncertainty, as against third persons acquiring adverse rights, when the particular articles intended to be conveyed are not separated or designated in any way, so that they can be distinguished from others of the same kind. JONES ON CHATTEL MORTGAGES (4th ed.), § 56; AM. & ENG. ENCYC. OF LAW, V, 963; note to *Oxsheer* v. *Watt*, 66 Am. St. Rep. 862: monographic note to *Barrett* v. *Fish*, 14 Am. St. Rep. 243; *Parker* v. *Chase*, 62 Vt. 206; *Richardson* v. *Alpena Lumber*

Co., 40 Mich. 203, 8 Cent. L. J. 297. It has been held that such mortgages are wholly void, even as between the parties to them. *Price* v. *McComas*, 21 Neb. 195, 31 N. W. 511. The Kentucky decision is supported by *Oxsheer* v. *Watt*, 91 Tex. 124, 41 S. W. 466, 66 Am. State Rep. 863, and by a dictum in *Brittain Dry Goods Company* v. *Blanchard*, 60 Kan. 263, 56 Pac. 474; *McCormick* v. *Reynolds* (1901), 62 Neb. 892. The holding of the court in the Kentucky case is based on the reasoning found in the following: *Heyward's Case*, 2 Coke on Littleton, 145; BACON'S ABRIDGMENT, "*Election*" (B); *Mervyn* v. *Lyds*, Dyer, 91; *Woffard* v. *McKinna*, 23 Tex. 36, 76 Am. Dec. 53; *Call* v. *Gray*, 37 N. H. 428; *Oxsheer* v. *Watt*, 91 Tex. 124. Excepting the last two, however, these authorities are dicta apparently, and with the exception of the last named case go no further than to hold this class of mortgages valid as between the parties to them. Such holding is grounded upon the doctrine that the grant shall be taken most strongly against the grantor; that the grantor impliedly invests his grantee, in such cases, with the right to select the stated number or quantity from the greater. Here the selection makes the mortgage good. See *Call* v. *Gray*, 37 N. H. 428, 75 Am. Dec. 141, where the court observes that the question is not as to the whereabouts of the title, but as to the effect of the mortgage. But to hold, with the Kentucky court, that a mortgage of this kind is good against third parties subsequently acquiring adverse rights in the mortgaged property, before such property has been identified, seems to the courts, generally, to be an unwarrantable extension of the "doctrine of election," inconsistent with fundamental requirements of the law—for example, the rules in analogous cases in the Law of Sales. By these courts it is thought that the doctrine as so extended is unsound because of probably resultant fraud, uncertainty, and diversity of interests and consequent discouragement of trade. See *Richardson* v. *Alpena Lumber Co.*, 40 Mich. 203. This uncertainty is apparent in the Kentucky reasoning as follows: "Purchasers would be entitled to at least the average of the whole, or maybe to themselves have choice, leaving enough of the average of the whole to satisfy the mortgage."

CONSTITUTIONAL LAW—POSSESSION OF GAME FISH IN CLOSED SEASON.—Laws 1902, c. 194, § 141, prohibits the possession during the closed season of trout taken outside the state. Action brought to recover penalties under above section of the forest, fish, and game law. Defendant, a foreign corporation extensively engaged in the fish business, imported into the United States from Canada trout in August, 1902, stored the same in cold storage, and in February shipped some of them to a dealer in Schenectady. The trout were imported with other fish in a regular boat licensed by the United States to carry freight between this country and Canada, were duly reported passed through the U. S. customs house, and duties were paid. *Held*, that § 141 of the game law, prohibiting the possession of game fishes caught outside the state of New York is void as depriving the citizen of the rights of property and liberty guaranteed by the state constitution. *People* v. *A. Booth & Co.* (1903), — N. Y. —, 86 N. Y. Supp. 272.

The question of the right of possession of certain fish during the closed season came up in *People* v. *Buffalo Fish Co.*, 164 N. Y. 93, 58 N. E. 34, 52 L. R. A. 803, but the statute there in controversy was held to apply only to fish taken in the waters of the state. So long ago as *Phelps* v. *Racey*, 60 N. Y. 10, it was held in New York that the legislature had full power to prohibit the possession of game during the closed season even though brought from another state, and this opinion is sustained in *People* v. *O'Neil*, 110